

E-FILED 12/22/11

#533/1083/1088

NOTE CHANGES MADE BY THE COURT.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY OF COLTON, a California
municipal corporation,

Plaintiff,

vs.

AMERICAN PROMOTIONAL
EVENTS, INC., et al.,

Defendants.

AND ALL RELATED ACTIONS

Case No. ED CV 09-1864 PSG (SSx)

[Consolidated with Case Nos.: CV 09-6630 PSG (SSx), CV 09-6632 PSG (SSx), CV 09-7501 PSG (SSx), CV 09-7508 PSG (SSx), and CV 10-824 PSG (SSx)].

**[AMENDED ~~PROPOSED~~] ORDER
DETERMINING GOOD FAITH
SETTLEMENT AND BARRING
CLAIMS**

Judge: Honorable Philip S. Gutierrez
Hearing Date: July 25, 2011
Time: 1:30 p.m.
Courtroom: 880

The County of San Bernardino ("County"), Robertson's Ready Mix, Inc. ("RRM"), and the Schulz Trust Parties¹ (collectively "Settling Defendants"²) filed a

¹ The Schulz Trust Parties include the following: Edward Stout; Edward Stout as the Trustee of the Stout-Rodriguez Trust; Elizabeth Rodriguez; John Callagy as Trustee of the Fredricksen Children's Trust Under Trust Agreement Dated February 20, 1985; John Callagy as Trustee of the E.F. Schulz Trust; Linda Fredricksen; Linda Fredricksen as Trustee of the Walter M. Pointon Trust Dated 11/19/1991; Linda Fredricksen as Trustee of the Michelle Ann Pointon Trust Under Trust Agreement Dated February 15, 1985; Linda Fredricksen as Trustee of the E.F. Schulz Trust; John Callagy; Mary Callagy; Jeanine Elzie; Stephen Callagy; Michelle Ann Pointon; and Anthony Rodriguez.

1 Motion for Determination of Good Faith Settlement and Barring of Claims
 2 (“Motion”) in the above-captioned action (“Consolidated Action”). The Motion
 3 relates to the settlement agreement (“Settlement Agreement”) entered into by and
 4 between the City of Colton, the City of Rialto, and the Rialto Utility Authority on
 5 the one hand, and Settling Defendants on the other hand. The Settlement
 6 Agreement is attached as **Exhibit 69** to the Declaration of Martin Refkin, submitted
 7 with the Motion.

8 ~~This matter came on regularly for hearing before this Court on~~
 9 ~~_____, 2011 in Department 880, before the Honorable Philip S.~~
 10 ~~Gutierrez.~~ After considering the moving and opposition papers and declarations of
 11 counsel, the Settlement Agreement submitted to the Court for approval, and the
 12 record as a whole, the Court hereby finds that the Settlement Agreement entered
 13 into by and between the Settling Defendants and the City of Colton, the City of
 14 Rialto, and the Rialto Utility Authority, was entered into in good faith and is fair,
 15 reasonable and consistent with the purposes of the Comprehensive Environmental
 16 Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601, *et seq.*,
 17 the Resource Conservation and Recovery Act (“RCRA”), Federal Common Law,
 18 California Code of Civil Procedure §§ 877 and 877.6(2), and state law theories for
 19 the apportionment of liability among alleged joint tortfeasors.

20 The matter having been briefed, argued and submitted for decision, and good
 21 cause appearing,

22
 23 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, and **IT IS**
 24 **FURTHER ORDERED** that:

25
 26
 27 ² The Settling Defendants include the Settling Defendants, together with certain related Defendants who
 28 are not defendants in the lawsuit, including: Robertson’s Management, LLC; RRM Properties, LTD; and
 Robertson’s Ready Mix, LTD.

1 1. The Settlement Agreement is hereby approved as a good faith
2 settlement and afforded all the rights and protections that accompany this
3 determination.

4 2. Section 6 of the Uniform Comparative Fault Act, 12 U.L.A. 147
5 (1996), in pertinent part, is hereby adopted as the Federal Common Law in this case
6 for the purposes of determining the legal effect of the Settlement Agreement.

7 3. The Court further finds and determines that the Settlement Agreement
8 has been entered into in good faith within the meaning of the California Code of
9 Civil Procedure §§ 877 and 877.6 and the rule of *Tech-Bilt, Inc. v. Woodward-*
10 *Clyde & Associates*, 38 Cal.3d 488 (1985).

11 4. Pursuant to Section 6 of UCFA and Section 877.6 of the California
12 Code of Civil Procedure, and CERCLA section 113, any and all claims for
13 contribution or indemnity against the Settling Defendants (as defined in the Settling
14 Agreement), arising out of the facts alleged in the Consolidated Action (except such
15 claims which are specifically reserved by the terms of the Settlement Agreement),
16 regardless of when such claims are asserted or by whom, are barred. Such claims
17 by any non-settling Party are barred regardless of whether they are brought pursuant
18 to CERCLA section 107, CERCLA section 113, or any other theory, as any claims
19 against the Settling Defendants arising out of the facts alleged in the Consolidated
20 Action are in the nature of contribution claims arising out of a common liability,
21 whether framed in terms of federal or state statute or common law. Notwithstanding
22 other terms of this Order, this Order does not bar claims of Fontana Water
23 Company/San Gabriel Valley Water Company or the regulatory claims of federal or
24 state regulatory agencies.

25 5. All claims, cross-claims and counterclaims and/or any other claims
26 which have been made or were deemed asserted and denied against the Settling
27 Defendants in the Consolidated Action are hereby dismissed with prejudice, except
28

1 for claims expressly reserved in the Settlement Agreement.

2 6. In light of the complexity of this litigation, the public interest in
3 prompt cleanup and the statutory goal of providing finality and certainty, the Court
4 further finds that there is no just reason to delay the entry of final judgment.
5 Pursuant to *Federal Rule of Civil Procedure* 54(b), judgment is hereby entered in
6 favor of the Settling Defendants with respect to all claims, cross-claims and
7 counterclaims against said parties in the Consolidated Action, except for claims
8 expressly reserved in the Settlement Agreement.

9 7. The Court retains jurisdiction to oversee implementation of the
10 Settlement Agreement.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 12/22, 2011

PHILIP S. GUTIERREZ

The Honorable Philip S. Gutierrez
United States District Court